

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

PETER MILLER, CLIFFORD HOYT, and
CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.

Plaintiffs,

v.

PATRICK TREADO and CHEMIMAGE CORP.

Defendants.

Case No. 05-10367 RWZ

**MOTION TO IMPOUND DEFENDANTS' MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PROTECTIVE ORDER**

Defendants Patrick Treado and ChemImage Corp. respectfully move this Court under LR 7.2 to impound Defendants' Memorandum in Opposition to Plaintiffs' Motion for Protective Order (hereinafter Defendants' Opposition). As grounds for this request, defendants state the following:

1. Counsel for plaintiffs have designated the deposition testimony of plaintiff Peter Miller as "CONFIDENTIAL" in accordance with the Protective Order in the present case.
2. Defendants are filing this motion because plaintiffs' counsel have taken the position that Defendants' Opposition must be filed under seal because it contains quotations from the designated confidential deposition transcript of plaintiff Peter Miller. (See Exhibit A, Jan. 5, 2006 e-mail from plaintiffs' counsel T. Holmberg to defendants' counsel K. Racowski informing that "it is not acceptable for you to make public any quotes or paraphrases of any other portions of the Miller deposition transcript"). Plaintiffs' counsel have taken this position notwithstanding the fact that counsel for plaintiffs publicly filed Plaintiffs' Motion for Protective

Order and supporting Memorandum, which includes quotations from Miller's deposition transcript. Plaintiffs' counsel have separately requested leave to file the entire Miller deposition transcript with the Court under seal. (See Plaintiffs' Motion to Seal Exhibits 1 and 3 to Plaintiff's Motion for Protective Order [D.E. 94]; see also Exhibit A).

3. In accordance with plaintiffs' request, defendants hereby request that the Court order the impoundment of Defendants' Opposition pursuant to LR 7.2. Defendants' Opposition will be filed promptly following the Court's action on this motion.

4. Pursuant to LR 7.2(a), defendants suggest the attached document be returned to defendants' custody after the period of impoundment.

WHEREFORE, defendants respectfully request that this Court:

A. Issue an order impounding the Defendants' Memorandum in Opposition to Plaintiffs' Motion for Protective Order; and

B. Grant such further and other relief as this Court deems just, equitable and proper.

Respectfully submitted,

PATRICK TREADO AND CHEMIMAGE CORP.

By their attorneys,

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick (BBO # 564324)
Duane Morris LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
Telephone: 617.289.9220
Fax: 617.289.9201
e-mail: ajfitzpatrick@duanemorris.com

Paul D. Weller (admitted *pro hac vice*)
Morgan, Lewis & Bockius, LLP
1701 Market Street

Philadelphia, PA 19103
Telephone: 215.963.5530
eFax: 215.963.5001
e-mail: pweller@morganlewis.com

January 5, 2007

LOCAL RULE 7.1 CERTIFICATION

Pursuant to 7.1(A)(2), the undersigned certifies that counsel for defendants have attempted to confer with counsel for plaintiffs regarding the issues raised in the foregoing motion. Plaintiffs' counsel indicated they would assent to the motion.

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on January 5, 2007.

In addition, complete copies of Defendants' Memorandum in Opposition to Plaintiffs' Motion for Protective Order are also being served, by e-mail, on January 5, 2007 on:

Martin B. Pavane, Esq.
Teodor J. Holmberg, Esq.
COHEN, PONTANI, LIEBERMAN AND PAVANE
551 Fifth Avenue
New York, New York 10176
Tel. (212) 687-2770
Fax (212) 972-5487

Brian L. Michaelis, Esq.
Erin E. McLaughlin, Esq.
BROWN RUDNICK BERLACK ISRAELS LLP
One Financial Center
Boston, MA 02111
Tel. (617) 856-8200
Fax (617) 856-8201

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick

Kroon, Christopher S.

From: Tidge Holmberg [THolmberg@cplplaw.com]
Sent: Friday, January 05, 2007 4:15 PM
To: kracowski@morganlewis.com
Cc: pweller@morganlewis.com; Fitzpatrick, Anthony J.; Kroon, Christopher S.; Martin B. Pavane; David P. Badanes; Ralph Grullon; Wanda Mason
Subject: Confidentiality of Miller Deposition Transcript
Importance: High

Ken:

Just to confirm the phone conversation we had moments ago:

(1) We have asked to file the entire Miller deposition transcript under seal (as an exhibit to the motion for a protective order). Thus, you are free to refer to our exhibit to avoid having to file other portions of the Miller deposition transcript.

(2) However, only the direct quotes used in our memorandum may be used in any document you file via ECF (i.e., in any document you make public). As stated in the memorandum itself, there has been no waiver of confidentiality for any other portions of the Miller deposition transcript. Thus, it is not acceptable for you to make public any quotes or paraphrases of any other portions of the Miller deposition transcript. If there is any question, you should file it under seal.

Have a good weekend,
Tidge

Teodor J. Holmberg
Cohen Pontani Lieberman & Pavane LLP
551 Fifth Avenue
New York, New York 10176
Tel.: 212-687-2770
Fax: 212-972-5487
e-mail: tidge@cplplaw.com

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